

October 5, 2018

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS, CHARTER SCHOOLS, AND OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND
REGULATION SECTION 1859.76, TITLE 2, CALIFORNIA
CODE OF REGULATIONS, RELATING TO
LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced Regulation Section, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, OPSC, at its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend the above-referenced regulation section under the authority provided by Section 17070.35 of the Education Code, and makes specific reference Sections 17070.35, 17072.12, and 17072.35 of the Education Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on October 8, 1999.

The SAB, at its June 27, 2018 meeting, adopted a proposed regulatory amendment to the SFP Regulations that would extend for five years [until January 1, 2024] the additional grant to school districts for new construction general site development costs. This additional grant helps school districts cover the extra costs for items such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields. School districts may be eligible for the additional grant when building new schools and for additions to existing school sites where additional acreage is acquired.

Bond Funds Impacted

The following five State school bonds were authorized by the Legislature and approved by the State's electorate for purposes of school facility construction:

- Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998 (Proposition 1A)
- Kindergarten-University Public Education Facilities Bond Act of 2002 (Proposition 47)
- Kindergarten-University Public Education Facilities Bond Act of 2004 (Proposition 55)
- Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D)
- Kindergarten through Community College Public Education Facilities Bond Act of 2016 (Proposition 51)

Background and Problem Being Resolved

The SAB adopted the additional grant for general site development costs at its June 28, 2006 meeting. The proposed regulation was approved by the OAL and filed with the Secretary of State on September 5, 2006. This additional grant helps school districts cover the extra costs for items such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields. School districts may be eligible for the additional grant when building new schools and for additions to existing school sites where additional acreage is acquired.

As first implemented, the additional grant for general site development costs was to be suspended "no later than January 1, 2008" unless extended by the SAB. The following is a sequence of events extending the additional grant for general site development:

- First One-Year Extension: The SAB, at its December 12, 2007 meeting, approved emergency regulations extending the suspension date to "no later than January 1, 2009," which was approved by the OAL and filed with the Secretary of State on March 3, 2008.
- Second One-Year Extension: The SAB, at its February 25, 2009 meeting, approved extending the suspension date to "no later than January 1, 2010," which was approved by the OAL and filed with the Secretary of State on September 18, 2009.
- Third One-Year Extension: The SAB, at its November 4, 2009 meeting, approved extending the suspension date to "no later than January 1, 2011," which was approved by the OAL and filed with the Secretary of State on April 8, 2010.
- Fourth One-Year Extension: The SAB, at its June 23, 2010 meeting, approved extending the suspension date to "no later than January 1, 2012," which was approved by the OAL and filed with the Secretary of State on April 27, 2011.
- Fifth Two-Year Extension: The SAB, at its July 12, 2011 meeting, approved extending the suspension date to "no later than January 1, 2014," which was approved by the OAL and filed with the Secretary of State on December 28, 2011.
- Sixth One-Year Extension: The SAB, at its May 22, 2013 meeting, approved extending the suspension date to "no later than January 1, 2015," which was approved by the OAL, filed with the Secretary of State on October 30, 2013, and took effect January 1, 2014, due to Senate Bill (SB) 1099, Chapter 295, Statutes of 2012.
- Seventh One-Year Extension: The SAB, at its August 20, 2014 meeting, approved extending the suspension date to "no later than January 1, 2016," which was approved by the OAL, filed with the Secretary of State on February 9, 2015, and took effect on April 1, 2015, due to SB 1099, Chapter 295, Statutes of 2012.

- Eighth One-Year Extension: The SAB, at its May 27, 2015 meeting, approved extending the suspension date to “no later than January 1, 2017,” which was approved by the OAL and filed with the Secretary of State on December 21, 2015.
- Ninth One-Year Extension: The SAB, at its May 25, 2016 meeting, approved extending the suspension date to “no later than January 1, 2018,” which was approved by the OAL and filed with the Secretary of State on December 12, 2016.
- Tenth One-Year Extension: The SAB, at its June 5, 2017 meeting, approved extending the suspension date to “no later than January 1, 2019,” which was approved by the OAL and filed with the Secretary of State on December 20, 2017.

The proposed regulatory amendment continues to be extended until a complete analysis of the new construction base grant can be completed. The analysis must determine whether the extra costs associated with the additional grant for general site development, (such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities and permanent playground equipment, and athletic fields), are included in the SFP per-pupil base grant. There has not been conclusive evidence to show that this additional grant is not needed to complete the projects.

Attached to this Notice is the specific regulatory language of the proposed regulatory action. You may also review the proposed regulatory language on OPSC’s website at www.dgs.ca.gov/opsc. Copies of the amended regulatory text will be mailed to any person requesting this information by using OPSC contact information set forth on page 7. The proposed regulation amends the SFP Regulations under the CCR, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.5, Regulations relating to the Leroy F. Greene School Facilities Act of 1998.

Financial Impact

From the inception of the general site development grant in 2006 through December 2023, 837 school facility projects have and may receive the general site development additional grant, averaging \$396,666 per eligible project in State bond cost. [Please refer to Attachment 1 for the bond funds apportioned to date and projected eligible projects for the next five fiscal years (2018/19 through 2022/23, and July through December 2023) for the general site development grant.] School districts may be eligible for the additional grant when building new schools and for additions to existing school sites where additional acreage is acquired.

The SAB is providing approvals for New Construction, Charter School Facilities Program and Facility Hardship/Seismic Mitigation Program (SMP) projects. Facility Hardship/Rehabilitation and SMP projects are health and safety projects that could be eligible for the general site development grant. Health and safety projects are presented to the SAB on an on-going basis.

Anticipated Benefits of the Proposed Regulations

Extending the SFP general site development grant for five years will have a positive impact on California businesses providing landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields, including the companies which supply the materials for these improvements. Failure to implement this regulation may require reducing the scope of work for some school projects.

The State of California benefits from this regulation as it assists in increasing the State’s infrastructure investment resulting in a positive impact to the State’s economy as well as help to support job creation. This regulation will have a positive impact to various business, manufacturing, and construction-related industries

such as architecture, engineering, trades and municipalities, along with the creation of an unknown amount of [temporary] jobs.

There is a public health and safety impact assigned to the regulation. School site occupants, especially young children, will have less risk of injury and safer ingress and egress when driveways and walkways are wide, level, and extensive, when finish grading is thorough, when play facilities are of high quality on safe ground cover material, and athletic fields are well-designed with safe playing surfaces, adequate protective fences, and appropriate walkways.

The proposed regulatory amendment is therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of this regulatory amendment will have a positive impact on public health and safety at K-12 public schools because school site occupants will have less risk of injury for the reasons noted above.

Summary of the proposed regulatory amendment is as follows:

Existing Regulation Section 1859.76 provides new construction additional grants for specific types and amounts of site development costs. It provides that the additional grant for general site development costs shall be suspended “no later than January 1, 2019” unless extended by the SAB. The proposed amendment extends the suspension of the additional grant for general site development costs until “no later than January 1, 2024.”

Statutory Authority and Implementation

Education Code Section 17070.35. (a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following: (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter.

Government Code Section 15503. Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval.

Determination of Inconsistency or Incompatibility with Existing State Regulations

The proposed regulatory amendment continues to be extended until a complete analysis of the new construction base grant can be completed. The analysis must determine whether the extra costs associated with the additional grant for general site development, (such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities and permanent playground equipment, and athletic fields), are included in the SFP per-pupil base grant. There has not been conclusive evidence to show that this additional grant is not needed to complete the projects. School districts may be eligible for the additional grant when building new schools and for additions to existing school sites where additional acreage is required.

After conducting a review, OPSC, on behalf of the SAB, has concluded that this is the only regulation on this subject area, and therefore, the proposed regulation is neither inconsistent nor incompatible with existing State laws and regulations. The proposed regulatory amendment is within the SAB’s authority to enact regulations for the SFP under Education Code Section 17070.35 and Government Code Section 15503.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulation does not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require school districts or charter schools to incur additional costs in order to comply with the proposed regulation.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Executive Officer of the SAB has made the following initial determinations relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- The proposed regulations create no costs to any local agency, school district, or charter school requiring reimbursement pursuant to Section 17500 et seq., or beyond those required by law, except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- The proposed regulation creates no costs or savings to any state agency beyond those required by law.
- The SAB has made an initial determination that there will be no impact on housing costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact to Businesses and Jobs in California

There is a positive economic impact to California business by extending for five years the SFP general site development grant. This will provide the funds to school districts building new construction projects to contract with businesses and suppliers for necessary landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields, thus supporting jobs in these construction-related industries. The proposed regulation:

- Continues to be extended until a complete analysis of the new construction base grant can be completed. The analysis must determine whether the extra costs associated with the additional grant for general site development, (such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities and permanent playground equipment, and athletic fields), are included in the SFP per-pupil base grant. There has not been conclusive evidence to show that this additional grant is not needed to complete the projects;
- Extends this additional grant until “no later than January 1, 2024”;
- Adds an average \$396,666 per eligible project in State bond funds to the SFP new construction funding model, which includes the pupil grant base amount and other additional grants; and
- Creates an unknown amount of (temporary) jobs in landscaping, concrete, asphalt, finishing, playground and athletic field equipment, and other construction trades, along with stimulating the economy.

Further, by extending the SFP general site development grant for five years, it will have a positive impact on California businesses providing landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields, including the companies which supply the materials for these improvements because school districts will be able to more fully afford them. Failure to implement this regulation may require reducing the scope of work for some school projects.

This regulation affects various business, manufacturing, and construction-related industries such as architecture, engineering, trades and municipalities, which continues to promote the stimulation of the economy and helps to support job creation.

Therefore, the proposed regulation will have a positive impact on the creation of jobs, the creation of new businesses, and the expansion of businesses in California. It is not anticipated that the proposed regulation will result in the elimination of existing businesses or jobs within California.

Benefits to Public Health and Welfare, Worker's Safety, and the State's Environment

- There is a health and safety impact assigned to this regulatory amendment. School site occupants, especially young children, will have less risk of injury and safer ingress and egress when driveways and walkways are wide, level, and extensive, when finish grading is thorough, when play facilities are of high quality on safe ground cover material, and athletic fields are well-designed with safe playing surfaces, adequate protective fences, and appropriate walkways.
- There are continued benefits to the health and welfare of California residents and worker safety. School districts utilize construction and trades employees to work on school construction projects and although this proposed regulation does not directly impact worker's safety, existing law provides for the availability of a skilled labor force and encourages improved health and safety of construction and trades employees through proper apprenticeship training. Further, public health and safety is enhanced because a properly paid and trained workforce will build school construction projects that are higher quality, structurally code-compliant and safer for use by pupils, staff, and other occupants on the site.
- Extending the SFP general site development grant for five years will have a positive impact on California businesses providing landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields, including the companies which supply the materials for these improvements. Failure to implement this regulation may require reducing the scope of work for some school projects.
- This regulation will have a positive impact to various business, manufacturing, and construction-related industries such as architecture, engineering, trades (carpenters, masons, electricians, roofers, etc.) and municipalities, and supports the creation of an unspecified number of jobs.
- There is no impact to the State's environment from the proposed regulation.

EFFECT ON SMALL BUSINESSES

It has been determined that the proposed regulation will not have a negative impact on small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. Although the proposed regulation only applies to school districts and charter schools for purposes of funding school facility projects, the demand on the manufacturing and construction-related industries could potentially stimulate the creation of small businesses in these areas.

SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax

must be received at OPSC no later than November 19, 2018. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction
707 Third Street, 6th Floor
West Sacramento, CA 95605

E-mail Address: lisa.jones@dgs.ca.gov

Fax No.: (916) 375-6721

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Lisa Jones at (916) 376-1753. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (916) 376-1646.

ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulations should be addressed to the agency's regulations coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~/underline.
2. A copy of this Notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.dgs.ca.gov/opsc> under "Resources," click on "Laws and Regulations," then click on "SFP Pending Regulatory Changes."

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB has determined that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulations coordinator named in this notice or may be accessed on the Web site listed above.